

Agency Justification: The commission proposed amending the rule to provide clarity during the 2016 election cycle due to legislative enactments related to independent expenditures. The legality of those enactments under the Arizona Constitution remains open to question. However, in the interest of consistency, the Commission proposes to adopt this rule change. Additionally, this change removes references to A.R.S. 16-917 which will become outdated and reorganizes the rule for benefit of simplicity by moving issues related to separate regulated entities to separate rules.

#### **R2-20-109. Independent Expenditure Reporting Requirements**

- A.** In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if expressly provided otherwise by another Commission rule.
- B.** ~~All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:~~
- ~~1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.~~
  - ~~2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.~~
  - ~~3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:~~
    - ~~a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;~~
    - ~~b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and~~
    - ~~c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.~~
  - ~~4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:~~
    - ~~a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.~~

- b. ~~Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.~~
- c. ~~If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.~~
- d. ~~If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.~~
- 5. ~~For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.~~

**C. ~~Timing of reporting expenditures.~~**

- 1. ~~Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.~~
- 2. ~~In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:~~
  - a. ~~For a month to month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.~~
  - b. ~~For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.~~
  - c. ~~For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.~~

**D. ~~Transportation expenses.~~**

- 1. ~~Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in kind contributions.~~
- 2. ~~If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:~~
  - a. ~~Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be~~

~~considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate-owned automobiles in addition to any other automobile.~~

- ~~b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.~~

~~3. Use of airplanes.~~

- ~~a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.~~
- ~~b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.~~

- ~~4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.~~

~~E. Reports and Refunds of Excess Monies by Participating Candidates~~

- ~~1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:~~
  - ~~a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.~~
  - ~~b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.~~
    - ~~i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.~~
    - ~~ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B).~~

~~Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.~~

- ~~2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.~~
  - ~~a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.~~
  - ~~b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).~~
- ~~3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.~~

**FB.** Independent Expenditure Reporting Requirements.

1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
- ~~2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection (F), "literature and advertisement" includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.~~
- ~~32. Any person who fails to file:~~
  - a. A timely campaign finance report pursuant to A.R.S. 16-941(D), A.R.S. §16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B), except as provided in A.R.S. §16-922(1).
  - b. A timely campaign finance report pursuant A.R.S. § 16-913, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B), except as provided in A.R.S. 16-922(2)
- ~~3. Any person making an independent expenditure on behalf of a candidate, participating or non-participating, and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). An expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. This subsection and A.R.S. § 16-942(B) applies to any political committee that accepts contributions or makes expenditures on behalf of any candidate, participating or nonparticipating, regardless of any other contributions taken or expenditures made. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Any expenditure advocating against one or more candidates~~

shall be considered an expenditure on behalf of any opposing candidate(s). Penalties shall be assessed as follows:

- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable ~~one of the~~ adjusted primary election spending limit or adjusted general election spending limit.
  - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
  - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
  - a. is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
  - b. has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-941(D) and A.R.S. § 16-958(A)-(B).
7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
  - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
  - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
    - i. The specific facts constituting the denial;
    - ii. A description of the respondent's right to request a hearing and to request and informal settlement conference; and
    - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02 (A)-(J) and (b) remains in compliance with section part (2) of this subsection (F). All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit these entities.
9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in part (8) of this subsection (F); or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or parts (1), (2), or (6) of this subsection (F). Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and part (3) of this subsection (F), in addition to any other penalties applicable pursuant to rule or statute.
10. Neither a form filed seeking an exemption pursuant to this subsection (F) nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-9958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection (F) does not constitute a finding or determination that the filer is or should be considered a political committee.
- ~~11. Any entity that has been granted an exemption as of September 11, 2014 is deemed compliant with the requirements of subpart (5) of this subsection (F) for the election cycle ending in 2014.~~
12. For purposes of this rule:
  - a. An entity shall not be found to be a political committee under A.R.S. §16-901(20)(f) unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity plus the total reportable expenditures made by the entity exceeds both \$500 and fifty percent (50%) of the entity's total spending during the election cycle.
    - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
    - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
    - iii. For purposes of this provision, grants to other organizations shall be treated as follows:

- (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
- (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
- iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
- v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
  - (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
  - (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
- b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

~~G. Non-participating Candidate Reporting Requirements and Contribution Limits. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2 20 222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:~~

- ~~1. Penalties under A.R.S. § 16-942(B);, for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):~~
  - ~~a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.~~
  - ~~b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.~~

- ~~e. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.~~
- ~~d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.~~
- ~~2. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.~~
- ~~3. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).~~



**RENUMBERED AND RECODIFIED R2-20-109(B),(C),(E).**

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate reporting are renumbered here.

**~~R2-20-110. Candidate Campaign Bank Accounts~~**

~~A. — Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.~~

~~B. — A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.~~

~~C. — During the exploratory period, a candidate may receive debt retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt retirement contributions into the current election campaign bank accounts.~~

**R2-20-110. Participating Candidate Reporting Requirements**

**A. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:**

- 1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.**
- 2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.**
- 3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:**
  - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;**
  - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and**
  - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.**
- 4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:**

- a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
  - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
  - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
  - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.

**B. Timing of reporting expenditures.**

1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
  - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
  - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
  - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

**C. Reports and Refunds of Excess Monies by Participating Candidates**

1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:

- a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.
  - b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
    - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
    - ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.
  - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
  - b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).
3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

RENUMBERED R2-20-109(G)

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to non-participating candidate reporting and limits are renumbered here.

**R2-20-111. Books and Records Requirements**

- ~~A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.~~
- ~~B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:~~
- ~~1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:~~
    - ~~a. All contributions or other monies received by or on behalf of the candidate.~~
    - ~~b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.~~
    - ~~c. Cumulative totals contributed by each individual or political committee.~~
    - ~~d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.~~
    - ~~e. All periodic bank statements or other statements for the candidate's campaign bank account.~~
    - ~~f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.~~
  - ~~2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.~~
  - ~~3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.~~
  - ~~4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.~~
  - ~~5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.~~
  - ~~6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.~~
- ~~C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the~~

inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
  - a. All papers, records, or other items sought in the public inspection request;
  - b. No later than two business days after the date of the subpoena; and
  - c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

## **R2-20-111. Non-participating Candidate Reporting Requirements and Contribution**

### **Limits.** (Corrected numbering)

- A. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:
- B. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):
  1. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
  2. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
  3. The penalties in (B)(1) and (B)(2) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
  4. The dollar amounts in items (B)(1) and (B)(2), and the spending limits in item (B)(3) are subject to adjustment of A.R.S. § 16-959.

B. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.

C. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

## NO CHANGE

### **R2-20-112. Political party exception**

**A.** Pursuant to A.R.S. §§ 16-901(5)(b)(v) and (8)(c), payment by a political party of the costs of preparation, printing, display, mailing or other distribution for slate cards, sample ballots, other written materials or listings of candidates that substantially promote three or more candidates for any public office for which an election is held, and other election activities not related to a specific candidate, shall not be considered a contribution or an expenditure for purposes of the Act or Commission rules. This exception is subject to the following limitations:

1. "Slate card" is defined as a list that contains only the names, party affiliations and offices sought by the candidates; photographs of the candidates; and general information regarding the date of the primary or general election and the location of the recipient's polling place;
2. "Sample ballot" is defined as a facsimile of a ballot listing only the names, party affiliations and offices sought by the candidates, appearing substantially as they would on an actual ballot;
3. "Other written materials or listings of candidates that substantially promote three or more candidates" are defined as materials that contain one or more of the elements of a slate card, in addition to statements and/or images describing the platform of the sponsoring party and the position of the party's candidates, and does not feature, mention, or depict a candidate or candidates of another party;
4. "Other election activities not related to a specific candidate" includes invitations to party-sponsored events, issue canvassing, and voter-registration efforts;
5. "Billboards" are defined as outdoor signs that are larger than thirty-two square feet in size.
6. The exception set forth in Subsection (A) shall not apply to materials defined in 1-3 above when distributed or displayed prior to the general election period unless each candidate featured is unopposed in the primary election.
7. The exception set forth in this Subsection (A) shall not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems, billboards, or in newspapers, magazines or similar types of general circulation advertising.

**B.** This Section is intended to establish, for purposes of the Act and Commission rules, circumstances under which the payment by a political party of certain costs described herein shall be excluded from the definition of contribution pursuant to A.R.S. § 16-901(5)(b)(v) or from the definition of expenditures pursuant to A.R.S. § 16-901(8)(c), as applicable. Nothing in this Section shall be construed to prohibit a political party from making any expenditure or contribution not otherwise prohibited by Arizona law.

**C.** The Commission shall treat as an expenditure of de minimis value the payment by a political party of the costs of (1) preparation and display on the political party's website of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held; or (2) preparation and distribution via email, to recipients who have subscribed to receive email from the political party and whose email addresses are not rented, purchased or otherwise obtained from a third-party source, of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held. A political party that pays the costs of preparation, display and/or

distribution of a slate card, sample ballot or other printed listing of three or more candidates, as described in this subsection, and which is otherwise required to file a campaign finance report in accordance with A.R.S. § 16-913, shall disclose such payment as an expenditure with a value of zero dollars.



NO CHANGE

**R2-20-113. Candidate Statement Pamphlet**

- A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. §16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot.
- B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:
  - 1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  - 2. In the general election: write in candidates

Renumbered R-20-110

Agency Justification: In order to accommodate reorganizing R2-20-109, R2-20-110 is renumbered as R2-20-114.

R2-20-114. Candidate Campaign Bank Accounts

A. Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.

B. A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.

C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt-retirement contributions into the current election campaign bank accounts.

Renumbered R2-20-111

Agency Justification: In order to accommodate reorganizing R2-20-109, R2-20-110 is renumbered as R2-20-115.

**R2-20-115. Books and Records Requirements**

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
  - 1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
    - a. All contributions or other monies received by or on behalf of the candidate.
    - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
    - c. Cumulative totals contributed by each individual or political committee.
    - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
    - e. All periodic bank statements or other statements for the candidate's campaign bank account.
    - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in ARS 16-948(C) for each vendor.
  - 2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
  - 3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
  - 4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
  - 5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
  - 6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election,

the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
  - a. All papers, records, or other items sought in the public inspection request;
  - b. No later than two business days after the date of the subpoena; and
  - c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

Agency Justification: Because R2-20-109 has become a lengthy rule, breaking it down by regulated entities simplifies the rule. Accordingly, rules related to participating candidate use of funds that were in R2-20-109 are consolidated with other like rules here.

**R2-20-702. Use of Campaign Funds**

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- C. A participating candidate shall not use funds in the candidate's campaign account for:
  - 1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
  - 2. Food and beverages for staff and volunteers exceeding \$11 for breakfast, \$16 for lunch, and \$27 for dinner, per person.
  - 3. Personal use, which includes, but is not limited to, any item listed below:
    - a. Household food items or supplies.
    - b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
    - c. Tuition payments, other than those associated with training campaign staff.
    - d. Mortgage, loan, rent, lease or utility payments:
      - i. For any part of any personal residence of the candidate or a member of the candidate's family; or
      - ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
    - e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
    - f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
    - g. Gifts or donations.
    - h. Extended warranties or other similar purchase options that extend beyond the campaign.
  - 4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to

enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

- D.** Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80% of the original purchase price including the cost of accessories.
- E.** During the primary election period, a participating candidate shall not make any expenditure greater than the difference between
1. the sum of early contributions received plus public funds disbursed through the primary election period; less
  2. all other expenditures made during and for the exploratory, qualifying and primary election periods.
- F.** During the general election period, a participating candidate shall not make any expenditure greater than the difference between
1. the amount of public funds disbursed during and for the general election period; less
  2. all other expenditures made during and for the general election period.
- G.** Transportation expenses.
1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
    - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
    - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
  3. Use of airplanes.
    - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
    - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of

the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.

4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.